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PTO/SB/33 (07-05)

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<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional) <b>BWS 05-04</b>	
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>by fax</u> Signature <u>Bernard W. Sandt</u> Typed or printed name <b>BERNARD W. SANDT</b>		Application Number <u>11/0190175</u> <u>11/019570</u> <u>11/019570</u> Filed <b>11/8/2001</b>	First Named Inventor <b>Jia Po Lee</b>
		Art Unit <b>1743</b>	Examiner <b>L.A. Alexander</b>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.  This request is being filed with a notice of appeal.  The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Eofin PTO/SB/96) <input checked="" type="checkbox"/> attorney or agent of record. <b>19,213</b> Registration number _____ <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____		Signature _____ Typed or printed name _____ <b>989 681 6852</b> Telephone number _____ Date _____	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input checked="" type="checkbox"/> Total of <b>2</b> forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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**RECEIVED**  
**CENTRAL FAX CENTER****OCT 01 2007****IN THE UNITED STATES PATENT & TRADEMARK OFFICE**

Applicant: Jin Po Lee

Serial No: 10/019,570

Filed: 11/8/2001

For: Multiple Analyte Assay Device

Group Art Unit: 1743

Examiner: L. A. Alexander

Mail Stop RCE  
Commissioner for Patents  
P.O Box 1450  
Alexandria, VA 22313-1450

By Fax

Pre-Appeal Brief Request for Review.

Applicant's claims 35-43 have been rejected under 35 USC 102 (e) as anticipated by Kimrov US 5,770,458. Basically Kimrov shows a cup assay device in which the assay strips are contained within the cup and as a matter of fact within the housing within the cup.

It is submitted that a comparison of the drawings in Kimrov with those in applicant's application shows basic differences which make it clear that there is no identity or equivalence in the cited reference of each of the limitations in the claimed device as required to constitute anticipation under 35 USC 102.

In particular applicant has amended the claims so that they reflect the fact that the assay strips extend beyond the housing formed by the base and its cover. This type of construction of the device is necessary if the device is to be used as a dipstick assay device. Kimrov on the other hand has the assay strips protected by the wall of the cup and the cover over strips sealing the assay strips to the wall of the housing. The assay strips in Kimrov are not free standing as in the case of applicant's device.

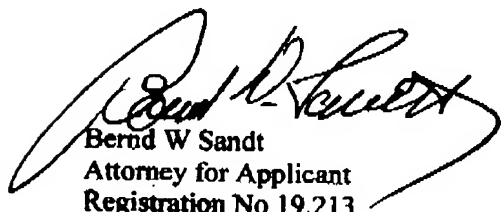
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SN10/019570  
BWS 05-04

It would be impossible to use the device of Kimrov as a dipstick because the assay strips cannot be directly exposed to a sample. As the Examiner admitted in an earlier response each slot of Kimrov containing the assay strips is sealed with a cover panel to prevent leakage. Thus the entire assay strip is enclosed within the housing for the assay strip

The second distinguishing feature is the cap employed in applicant's device as claimed. Since the assay strips in Kimrov are enclosed within the cup the Kimrov device cannot use a removable cap above the housing and enclosing the assay strips. The only removable cap shown by Kimrov is one that seals the cup and does not enclose the assay strips. Furthermore applicant's device has an opening in the cap that allows the sample to directly contact the assay strips. No such cap is provided in the Kimrov device since in order for the sample to contact the assay strips it is necessary to invert the device after the addition of the sample. Thus an opening in the cap would cause the sample to be spilled.

The wording of the claims submitted by applicant are believed to clearly define these differences. Applicant's claims are therefore deemed to be patentable over Kimrov and an allowance is respectfully solicited.



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## PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

BWS 05-01

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on

Signature

Typed or printed name

BERNARD W. SANDT

Application Number

18/0190175

Filed

11/8/2001

First Named Inventor

Jin Po Lee

Art Unit

1743

Examiner

L.A. Alexander

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See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.  
(Form PTO/SB/96)

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attorney or agent of record.

Registration number

19,213

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attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

*Bernard W. Sandt*  
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